IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R.No. 1317 of 1997
Date of decision : 18.10.2006.

Rajinder Kumar

.....Petitioner.

Versus

Niranjan Lal & Anr.

.....Respondents.

CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA

Present : Mr.Sanjay Vij,Advocate
for the petitioner.

Mr. Sudhir Aggarwal, Advocate
for the respondent.

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VINOD K. SHARMA,J.(ORAL)

The present revision petition has been filed against the orders passed by the learned Rent Controller, Gurgaon and confirmed by the appellate authority dismissing the ejectment petition filed by the petitioner.

The petitioner has sought the eviction of the respondent-tenant from a room being used as a shop on the ground of personal necessity as well as for non-payment of rent. The rent was tendered on the first date of hearing and the case was contested qua the ground of personal necessity.

Before the learned Rent Controller the counsel for the respondent admitted the personal necessity of the petitioner to occupy the premises in dispute but he claimed that as the tenanted premises was a non residential building the same cannot be got evicted on the ground of personal necessity. It was also claimed that the tenanted premises was built

in the year 1967 with an intent and purpose to let it out as shop and it was never used as an integral part of the whole building as reflected in the site plans Ex. A2 and Ex. A3. The Court has held it to be an independent unit by holding that no ejectment could be ordered for non-residential building, accordingly ejectment petition was dismissed. The petitioner filed an appeal against the said order. The appellate Authority, Gurgaon dismissed the appeal. The learned appellate authority also came to the conclusion that the premises was being used as a shop from the very beginning. It was not part and parcel or integral part of the residential building. In view of this, it was held that no permission under section 11 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 was required to be taken. Accordingly by holding that it was not a residential building, the appeal was dismissed.

The learned counsel for the petitioner placed reliance on a judgment in **Mohinder Prasad Jain Vs. Manohar Lal Jain (2006) 2 Supreme Court Cases 724** to contend that landlord is entitled to seek eviction of tenant from a non-residential building on the ground of personal necessity. Thus, the contention of the learned counsel for the petitioner is that once the personal need of the petitioner was admitted by the tenant, he is entitled to seek eviction in view of the fact that for the purposes of personal necessity there could be no distinction between residential building and the commercial building. The learned counsel for the petitioner also placed reliance on the judgment of this Court in case **Raj Kumar Gambir Vs. Kanwar Sain Jain 2003(1) RCR 558** to contend that when in a residential building a room on the ground floor is let out for a small shop, the character of the building remain as a residential building. The learned counsel for the petitioner contends that there is ample evidence to show that

the building was in the residential area and as a matter of fact the building plan was sanctioned by the Municipal Committee as a residential building and it was in a residential area. Therefore, the finding of the learned Court below on this ground cannot be sustained.

The learned counsel for the respondent placed reliance on the judgment of this Court in case of **2003(1) RCR 670** to contend that it was not open to the petitioner to seek eviction of the respondent herein for his residence once the shop was given for non-residential purposes. The contention of the learn **State Bank of Patiala Vs. S. Zulzuaoar Singh Virk and others**ed counsel for the respondent is that both the Courts below have given a concurrent finding that from the very beginning the room was let out as a shop and, therefore, it is a commercial building. The petitioner is not entitled to seek eviction on personal bona fide necessity for his residential purposes as the case set up by him was that he needed the same for his residential purposes. The learned counsel for the respondent placed reliance on the judgments of this Court in cases **M/s K. G. Industries and others Vs. Joginder Singh 1992(2) Punjab Law Reporter 256** and **Ram Gopal Vs. Sher Singh 1995(2) Punjab Law Reporter 445** to contend that when a room in a residential building is let out to the tenant as a shop, landlord is not entitled to eject the tenant on the ground of personal necessity as the shop would be treated as an independent unit. The contention of the learned counsel for the respondent, therefore, is that when in the present case the petitioner had let out the premises as a separate independent unit for the purpose of business/trade and the premises are located in a predominantly commercial area then the building would

become non-residential building and, therefore, it would not be open to the petitioner to seek ejectment and, therefore, the orders passed by the learned Courts below are in consonance with the law laid down by this Court.

I have considered the rival contentions of the parties and find that in the present case the evidence brought on record that the room was constructed as a residential building, though, the same was let out for commercial purpose and, therefore, the nature of the building would not change merely because one of the room was being used as a shop from the initiation of the tenancy. In the present case the respondent tenant admitted the bona fide requirement of the petitioner to occupy the room for his residential purposes as has been noticed by the learned Rent Controller and the only reason given was that the premises being commercial was not available for possession on ground of personal bona fide requirement. The said view stands overruled by the Hon'ble Supreme Court in the case of **Mohinder Prasad Jain Vs. Manohar Lal Jain (supra).** As in the present case the room is to be used as part and parcel of residential building, the same cannot be said to be a commercial building so as to dis-entitle the petitioner to seek ejectment.

Reliance by the learned counsel for the respondent on the judgment of this Court in the case of **State Bank of Patiala Vs. S. Zulzuaoar Singh Virk and others** (supra) is of no help to the respondent as in the said case this Court has been pleased to lay down that a person cannot seek ejectment from a non-residential building for the purpose of residence. However, in the present case the building is residential with only one room

being used as a shop and therefore, the character of the building does not in any way change.

Similarly, the judgments of this Court in the case of **Brij Lal Vs. Dev Raj 1993(2) Rent Control Reporter 35; Ram Gopal Vs. Sher Singh (1995-5) P.L.R. 445** and **M/s K. G. Industries and others Vs. Joginder Singh 1992(2) Punjab Law Reporter 256** cannot be of any help as in all the said cases the law laid down was that a commercial building cannot be got vacated for personal need. This view no longer holds good in view of the judgment of Hon'ble Supreme Court in **Mohinder Prasad Jain Vs. Manohar Lal Jain (supra).**

Accordingly, this revision petition is allowed. The impugned orders are set aside. The petition under Section 13 of the Haryana Urban (Control of Rent & Eviction) Act, 1973 is allowed.

No orders as to costs.

October 18,2006 **(VINOD K. SHARMA)**
'sp' **JUDGE**